

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2598

Introduced by Assembly Member Houston

February 24, 2006

An act to amend Section ~~52204~~ 13385 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2598, as amended, Houston. ~~Reclamation districts. Water quality violations: mandatory minimum penalties.~~

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (act). The act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation, as defined, or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months.

This bill, with regard to a publicly owned treatment works (POTW) that discharges less than 1,000,000 gallons of waste per day, would revise these described mandatory minimum penalties by requiring those penalties to be calculated pursuant to a specified formula.

~~Existing law, under certain circumstances, authorizes a reclamation district to order a special election to be held for the purpose of determining whether to issue bonds.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13385 of the Water Code is amended to
2 read:
- 3 13385. (a) Any person who violates any of the following
4 shall be liable civilly in accordance with this section:
- 5 (1) Section 13375 or 13376.
- 6 (2) Any waste discharge requirements or dredged or fill
7 material permit issued pursuant to this chapter or any water
8 quality certification issued pursuant to Section 13160.
- 9 (3) Any requirements established pursuant to Section 13383.
- 10 (4) Any order or prohibition issued pursuant to Section 13243
11 or Article 1 (commencing with Section 13300) of Chapter 5, if
12 the activity subject to the order or prohibition is subject to
13 regulation under this chapter.
- 14 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
15 401, or 405 of the Clean Water Act, as amended.
- 16 (6) Any requirement imposed in a pretreatment program
17 approved pursuant to waste discharge requirements issued under
18 Section 13377 or approved pursuant to a permit issued by the
19 administrator.
- 20 (b) Civil liability may be imposed by the superior court in an
21 amount not to exceed the sum of both of the following:
- 22 (1) Twenty-five thousand dollars (\$25,000) for each day in
23 which the violation occurs.
- 24 (2) Where there is a discharge, any portion of which is not
25 susceptible to cleanup or is not cleaned up, and the volume
26 discharged but not cleaned up exceeds 1,000 gallons, an
27 additional liability not to exceed twenty-five dollars (\$25)
28 multiplied by the number of gallons by which the volume
29 discharged but not cleaned up exceeds 1,000 gallons.
- 30 The Attorney General, upon request of a regional board or the
31 state board, shall petition the superior court to impose the
32 liability.
- 33 (c) Civil liability may be imposed administratively by the state
34 board or a regional board pursuant to Article 2.5 (commencing

1 with Section 13323) of Chapter 5 in an amount not to exceed the
2 sum of both of the following:

3 (1) Ten thousand dollars (\$10,000) for each day in which the
4 violation occurs.

5 (2) Where there is a discharge, any portion of which is not
6 susceptible to cleanup or is not cleaned up, and the volume
7 discharged but not cleaned up exceeds 1,000 gallons, an
8 additional liability not to exceed ten dollars (\$10) multiplied by
9 the number of gallons by which the volume discharged but not
10 cleaned up exceeds 1,000 gallons.

11 (d) For purposes of subdivisions (b) and (c), the term
12 “discharge” includes any discharge to navigable waters of the
13 United States, any introduction of pollutants into a publicly
14 owned treatment works, or any use or disposal of sewage sludge.

15 (e) In determining the amount of any liability imposed under
16 this section, the regional board, the state board, or the superior
17 court, as the case may be, shall take into account the nature,
18 circumstances, extent, and gravity of the violation or violations,
19 whether the discharge is susceptible to cleanup or abatement, the
20 degree of toxicity of the discharge, and, with respect to the
21 violator, the ability to pay, the effect on its ability to continue its
22 business, any voluntary cleanup efforts undertaken, any prior
23 history of violations, the degree of culpability, economic benefit
24 or savings, if any, resulting from the violation, and other matters
25 that justice may require. At a minimum, liability shall be
26 assessed at a level that recovers the economic benefits, if any,
27 derived from the acts that constitute the violation.

28 (f) (1) Except as provided in paragraph (2), for the purposes
29 of this section, a single operational upset that leads to
30 simultaneous violations of more than one pollutant parameter
31 shall be treated as a single violation.

32 (2) (A) For the purposes of subdivisions (h) and (i), a single
33 operational upset in a wastewater treatment unit that treats
34 wastewater using a biological treatment process shall be treated
35 as a single violation, even if the operational upset results in
36 violations of more than one effluent limitation and the violations
37 continue for a period of more than one day, if all of the following
38 apply:

39 (i) The discharger demonstrates all of the following:

1 (I) The upset was not caused by wastewater treatment operator
2 error and was not due to discharger negligence.

3 (II) But for the operational upset of the biological treatment
4 process, the violations would not have occurred nor would they
5 have continued for more than one day.

6 (III) The discharger carried out all reasonable and immediately
7 feasible actions to reduce noncompliance with the applicable
8 effluent limitations.

9 (ii) The discharger is implementing an approved pretreatment
10 program, if so required by federal or state law.

11 (B) Subparagraph (A) only applies to violations that occur
12 during a period for which the regional board has determined that
13 violations are unavoidable, but in no case may that period exceed
14 30 days.

15 (g) Remedies under this section are in addition to, and do not
16 supersede or limit, any other remedies, civil or criminal, except
17 that no liability shall be recoverable under Section 13261, 13265,
18 13268, or 13350 for violations for which liability is recovered
19 under this section.

20 (h) (1) Notwithstanding any other provision of this division,
21 and except as provided in *paragraph (2) and subdivisions (j), (k),*
22 *and (l),* a mandatory minimum penalty of three thousand dollars
23 (\$3,000) shall be assessed for each serious violation.

24 (2) *With regard to a publicly owned treatment works (POTW)*
25 *that discharges less than one million gallons of waste per day,*
26 *the mandatory minimum penalty for each serious violation shall*
27 *be calculated by dividing the average daily dry weather flow*
28 *measured in gallons per day by one million and multiplying by*
29 *three thousand dollars (\$3,000).*

30 ~~(2)–~~

31 (3) For the purposes of this section, a “serious violation”
32 means any waste discharge that violates the effluent limitations
33 contained in the applicable waste discharge requirements for a
34 Group II pollutant, as specified in Appendix A to Section 123.45
35 of Title 40 of the Code of Federal Regulations, by 20 percent or
36 more or for a Group I pollutant, as specified in Appendix A to
37 Section 123.45 of Title 40 of the Code of Federal Regulations, by
38 40 percent or more.

39 (i) (1) Notwithstanding any other provision of this division,
40 and except as provided in *paragraph (2) and subdivisions (j), (k),*

1 and (I), a mandatory minimum penalty of three thousand dollars
2 (\$3,000) shall be assessed for each violation whenever the person
3 does any of the following four or more times in any period of six
4 consecutive months, except that the requirement to assess the
5 mandatory minimum penalty shall not be applicable to the first
6 three violations:

7 (A) Violates a waste discharge requirement effluent limitation.

8 (B) Fails to file a report pursuant to Section 13260.

9 (C) Files an incomplete report pursuant to Section 13260.

10 (D) Violates a toxicity effluent limitation contained in the
11 applicable waste discharge requirements where the waste
12 discharge requirements do not contain pollutant-specific effluent
13 limitations for toxic pollutants.

14 (2) *With regard to a publicly owned treatment works (POTW)*
15 *that discharges less than one million gallons of waste per day,*
16 *the mandatory minimum penalty for multiple violations as*
17 *described in paragraph (1) shall be calculated by dividing the*
18 *average daily dry weather flow measured in gallons per day by*
19 *one million and multiplying by three thousand dollars (\$3,000).*

20 ~~(2)–~~

21 (3) For the purposes of this section, a “period of six
22 consecutive months” means the period commencing on the date
23 that one of the violations described in this subdivision occurs and
24 ending 180 days after that date.

25 (j) Subdivisions (h) and (i) do not apply to any of the
26 following:

27 (1) A violation caused by one or any combination of the
28 following:

29 (A) An act of war.

30 (B) An unanticipated, grave natural disaster or other natural
31 phenomenon of an exceptional, inevitable, and irresistible
32 character, the effects of which could not have been prevented or
33 avoided by the exercise of due care or foresight.

34 (C) An intentional act of a third party, the effects of which
35 could not have been prevented or avoided by the exercise of due
36 care or foresight.

37 (D) (i) The operation of a new or reconstructed wastewater
38 treatment unit during a defined period of adjusting or testing, not
39 to exceed 90 days for a wastewater treatment unit that relies on a
40 biological treatment process and not to exceed 30 days for any

1 other wastewater treatment unit, if all of the following
2 requirements are met:

3 (I) The discharger has submitted to the regional board, at least
4 30 days in advance of the operation, an operations plan that
5 describes the actions the discharger will take during the period of
6 adjusting and testing, including steps to prevent violations and
7 identifies the shortest reasonable time required for the period of
8 adjusting and testing, not to exceed 90 days for a wastewater
9 treatment unit that relies on a biological treatment process and
10 not to exceed 30 days for any other wastewater treatment unit.

11 (II) The regional board has not objected in writing to the
12 operations plan.

13 (III) The discharger demonstrates that the violations resulted
14 from the operation of the new or reconstructed wastewater
15 treatment unit and that the violations could not have reasonably
16 been avoided.

17 (IV) The discharger demonstrates compliance with the
18 operations plan.

19 (V) In the case of a reconstructed wastewater treatment unit,
20 the unit relies on a biological treatment process that is required to
21 be out of operation for at least 14 days in order to perform the
22 reconstruction, or the unit is required to be out of operation for at
23 least 14 days and, at the time of the reconstruction, the cost of
24 reconstructing the unit exceeds 50 percent of the cost of
25 replacing the wastewater treatment unit.

26 (ii) For the purposes of this section, “wastewater treatment
27 unit” means a component of a wastewater treatment plant that
28 performs a designated treatment function.

29 (2) (A) Except as provided in subparagraph (B), a violation of
30 an effluent limitation where the waste discharge is in compliance
31 with either a cease and desist order issued pursuant to Section
32 13301 or a time schedule order issued pursuant to Section 13300,
33 if all of the following requirements are met:

34 (i) The cease and desist order or time schedule order is issued
35 after January 1, 1995, but not later than July 1, 2000, specifies
36 the actions that the discharger is required to take in order to
37 correct the violations that would otherwise be subject to
38 subdivisions (h) and (i), and the date by which compliance is
39 required to be achieved and, if the final date by which
40 compliance is required to be achieved is later than one year from

1 the effective date of the cease and desist order or time schedule
2 order, specifies the interim requirements by which progress
3 towards compliance will be measured and the date by which the
4 discharger will be in compliance with each interim requirement.

5 (ii) The discharger has prepared and is implementing in a
6 timely and proper manner, or is required by the regional board to
7 prepare and implement, a pollution prevention plan that meets
8 the requirements of Section 13263.3.

9 (iii) The discharger demonstrates that it has carried out all
10 reasonable and immediately feasible actions to reduce
11 noncompliance with the waste discharge requirements applicable
12 to the waste discharge and the executive officer of the regional
13 board concurs with the demonstration.

14 (B) Subdivisions (h) and (i) shall become applicable to a waste
15 discharge on the date the waste discharge requirements
16 applicable to the waste discharge are revised and reissued
17 pursuant to Section 13380, unless the regional board does all of
18 the following on or before that date:

19 (i) Modifies the requirements of the cease and desist order or
20 time schedule order as may be necessary to make it fully
21 consistent with the reissued waste discharge requirements.

22 (ii) Establishes in the modified cease and desist order or time
23 schedule order a date by which full compliance with the reissued
24 waste discharge requirements shall be achieved. For the purposes
25 of this subdivision, the regional board may not establish this date
26 later than five years from the date the waste discharge
27 requirements were required to be reviewed pursuant to Section
28 13380. If the reissued waste discharge requirements do not add
29 new effluent limitations or do not include effluent limitations that
30 are more stringent than those in the original waste discharge
31 requirements, the date shall be the same as the final date for
32 compliance in the original cease and desist order or time
33 schedule order or five years from the date that the waste
34 discharge requirements were required to be reviewed pursuant to
35 Section 13380, whichever is earlier.

36 (iii) Determines that the pollution prevention plan required by
37 clause (ii) of subparagraph (A) is in compliance with the
38 requirements of Section 13263.3 and that the discharger is
39 implementing the pollution prevention plan in a timely and
40 proper manner.

1 (3) A violation of an effluent limitation where the waste
2 discharge is in compliance with either a cease and desist order
3 issued pursuant to Section 13301 or a time schedule order issued
4 pursuant to Section 13300 or Section 13308, if all of the
5 following requirements are met:

6 (A) The cease and desist order or time schedule order is issued
7 on or after July 1, 2000, and specifies the actions that the
8 discharger is required to take in order to correct the violations
9 that would otherwise be subject to subdivisions (h) and (i).

10 (B) The regional board finds that, for one of the following
11 reasons, the discharger is not able to consistently comply with
12 one or more of the effluent limitations established in the waste
13 discharge requirements applicable to the waste discharge:

14 (i) The effluent limitation is a new, more stringent, or
15 modified regulatory requirement that has become applicable to
16 the waste discharge after the effective date of the waste discharge
17 requirements and after July 1, 2000, new or modified control
18 measures are necessary in order to comply with the effluent
19 limitation, and the new or modified control measures cannot be
20 designed, installed, and put into operation within 30 calendar
21 days.

22 (ii) New methods for detecting or measuring a pollutant in the
23 waste discharge demonstrate that new or modified control
24 measures are necessary in order to comply with the effluent
25 limitation and the new or modified control measures cannot be
26 designed, installed, and put into operation within 30 calendar
27 days.

28 (iii) Unanticipated changes in the quality of the municipal or
29 industrial water supply available to the discharger are the cause
30 of unavoidable changes in the composition of the waste
31 discharge, the changes in the composition of the waste discharge
32 are the cause of the inability to comply with the effluent
33 limitation, no alternative water supply is reasonably available to
34 the discharger, and new or modified measures to control the
35 composition of the waste discharge cannot be designed, installed,
36 and put into operation within 30 calendar days.

37 (iv) The discharger is a publicly owned treatment works
38 located in Orange County that is unable to meet effluent
39 limitations for biological oxygen demand, suspended solids, or

1 both, because the publicly owned treatment works meets all of
2 the following criteria:

3 (I) Was previously operating under modified secondary
4 treatment requirements pursuant to Section 301(h) of the Clean
5 Water Act (33 U.S.C. Sec. 1311(h)).

6 (II) Did vote on July 17, 2002, not to apply for a renewal of
7 the modified secondary treatment requirements.

8 (III) Is in the process of upgrading its treatment facilities to
9 meet the secondary treatment standards required by Section
10 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
11 1311(b)(1)(B)).

12 (C) The regional board establishes a time schedule for
13 bringing the waste discharge into compliance with the effluent
14 limitation that is as short as possible, taking into account the
15 technological, operational, and economic factors that affect the
16 design, development, and implementation of the control
17 measures that are necessary to comply with the effluent
18 limitation. For the purposes of this subdivision, the time schedule
19 may not exceed five years in length, except that the time
20 schedule may not exceed 10 years in length for the upgrade
21 described in subparagraph (B)(iv)(III). If the time schedule
22 exceeds one year from the effective date of the order, the
23 schedule shall include interim requirements and the dates for
24 their achievement. The interim requirements shall include both of
25 the following:

26 (i) Effluent limitations for the pollutant or pollutants of
27 concern.

28 (ii) Actions and milestones leading to compliance with the
29 effluent limitation.

30 (D) The discharger has prepared and is implementing in a
31 timely and proper manner, or is required by the regional board to
32 prepare and implement, a pollution prevention plan pursuant to
33 Section 13263.3.

34 (k) In lieu of assessing all or a portion of the mandatory
35 minimum penalties pursuant to subdivisions (h) and (i) against a
36 POTW serving a small community, as defined by subdivision (b)
37 of Section 79084, the state board or the regional board may elect
38 to require the POTW to spend an equivalent amount towards the
39 completion of a compliance project proposed by the POTW, if
40 the state or regional board finds all of the following:

1 (1) The compliance project is designed to correct the
2 violations within five years.

3 (2) The compliance project is in accordance with the
4 enforcement policy of the state board.

5 (3) The POTW has demonstrated that it has sufficient funding
6 to complete the compliance project.

7 (l) (1) In lieu of assessing penalties pursuant to subdivision
8 (h) or (i), the state board or regional board, with the concurrence
9 of the discharger, may direct a portion of the penalty amount to
10 be expended on a supplemental environmental project in
11 accordance with the enforcement policy of the state board. If the
12 penalty amount exceeds fifteen thousand dollars (\$15,000), the
13 portion of the penalty amount that may be directed to be
14 expended on a supplemental environmental project may not
15 exceed fifteen thousand dollars (\$15,000) plus 50 percent of the
16 penalty amount that exceeds fifteen thousand dollars (\$15,000).

17 (2) For the purposes of this section, a “supplemental
18 environmental project” means an environmentally beneficial
19 project that a person agrees to undertake, with the approval of the
20 regional board, that would not be undertaken in the absence of an
21 enforcement action under this section.

22 (3) This subdivision applies to the imposition of penalties
23 pursuant to subdivision (h) or (i) on or after January 1, 2003,
24 without regard to the date on which the violation occurs.

25 (m) The Attorney General, upon request of a regional board or
26 the state board, shall petition the appropriate court to collect any
27 liability or penalty imposed pursuant to this section. Any person
28 who fails to pay on a timely basis any liability or penalty
29 imposed under this section shall be required to pay, in addition to
30 that liability or penalty, interest, attorneys’ fees, costs for
31 collection proceedings, and a quarterly nonpayment penalty for
32 each quarter during which the failure to pay persists. The
33 nonpayment penalty shall be in an amount equal to 20 percent of
34 the aggregate amount of the person’s penalty and nonpayment
35 penalties that are unpaid as of the beginning of the quarter.

36 (n) (1) Subject to paragraph (2), funds collected pursuant to
37 this section shall be deposited in the State Water Pollution
38 Cleanup and Abatement Account.

39 (2) (A) Notwithstanding any other provision of law, moneys
40 collected for a violation of a water quality certification in

1 accordance with paragraph (2) of subdivision (a) or for a
2 violation of Section 401 of the Clean Water Act (33 U.S.C. Sec.
3 1341) in accordance with paragraph (5) of subdivision (a) shall
4 be deposited in the Waste Discharge Permit Fund and separately
5 accounted for in that fund.

6 (B) The funds described in subparagraph (A) shall be
7 expended by the state board, upon appropriation by the
8 Legislature, to assist regional boards, and other public agencies
9 with authority to clean up waste or abate the effects of the waste,
10 in cleaning up or abating the effects of the waste on waters of the
11 state or for the purposes authorized in Section 13443.

12 (o) The state board shall continuously report and update
13 information on its Web site, but at a minimum, annually on or
14 before January 1, regarding its enforcement activities. The
15 information shall include all of the following:

16 (1) A compilation of the number of violations of waste
17 discharge requirements in the previous calendar year, including
18 storm water enforcement violations.

19 (2) A record of the formal and informal compliance and
20 enforcement actions taken for each violation, including
21 stormwater enforcement actions.

22 (3) An analysis of the effectiveness of current enforcement
23 policies, including mandatory minimum penalties.

24 (p) The amendments made to subdivisions (f), (h), (i) and (j)
25 during the second year of the 2001–02 Regular Session apply
26 only to violations that occur on or after January 1, 2003.

27 ~~SECTION 1. Section 52201 of the Water Code is amended to~~
28 ~~read:~~

29 ~~52201. When any assessment, except an operation and~~
30 ~~maintenance assessment, levied and assessed upon district lands~~
31 ~~remains unpaid in whole or in part and, in the judgment of the~~
32 ~~board it would be for the best interest of the district or the~~
33 ~~landowners in the district to issue bonds to obtain money to pay~~
34 ~~the cost of reclamation, the indebtedness of the district, or any~~
35 ~~other legal charge, or when a petition signed by the owners of~~
36 ~~more than one-half of the land in the district is filed with the~~
37 ~~secretary, the board, by order entered upon its records, shall order~~

- 1 ~~a special election to be held at a place in the district to be~~
- 2 ~~designated by the board.~~

O